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JOHN F. DAVIS, CLERK

Supreme Court of the United States

No. 609—October Term 1961

NEW YORK MOBILE HOMES ASSOCIATION, and EMPIRE STATE HOUSE TRAILER OWNERS ASSOCIATION, and WALTER B. MANHARD, suing on behalf of themselves and all other persons, firms or corporations similarly situated,

Appellants,

against

THOMAS B. STECKEL, as Supervisor of the Town of Chili, Monroe County, New York; CHARLES MASON, WARD RODER and RAY SICKLES, as Tax Assessors of the Town of Chili, Monroe County, New York; and CORNELIUS OUWELEEN, as Town Clerk of the Town of Chili, Monroe County, New York,

Appellees.

REPLY TO MOTION TO DISMISS

The Appellants present this reply to the motion to dismiss:

ARGUMENT

The case here presents a substantial question under the Constitution of the United States, and its amendments. It is argued by the Appellees that no substantial question is here presented, warranting this Court in taking jurisdiction. The appellees, however, fail to call the Court's attention to the Order of the Court of Appeals of the State of New York, directing the return of the remittitur, and the determination of the Court of Appeals thereon as follows:

> "Upon the appeal herein there was presented, and necessarily passed upon, a question under the Constitution of the United States, *viz.:* Whether section 2, subd. 6-a of the Tax Law of the State of New York, reenacted as Section 102, subd. 12 (g) of the Real Property Tax Law of the State of New York, is in violation of or contrary to the provisions of the Constitution of the United States particularly the Fourteenth Amendment, which provides that no person shall be deprived of his property without due process of law. The Court of Appeals held that it is not".

This Order of the Court of Appeals expressly states that there was passed upon by the Court of Appeals, a question concerning the Constitution of the United States and particularly the Fourteenth Amendment thereto.

It clearly appears that the very decision which appellees rely upon on this motion to divest this Court of jurisdiction, is in fact the very basis for its jurisdiction.

The Supreme Court of the United States has held in Kerhoff vs. St. Nicholas Cathedral, 344 U. S. 94; 73 S. C. 143, 97 Lawyers Ed. 120 (1952) that

> "Because of the Constitutional question thus generally involved, we noted probable jurisdiction—the unequivocal remittitur of the New York Court of Appeals 302 N. Y. 689, 98 N. E. 2nd 485 specifically stating the Constitutionality of the Statute was necessary ground for decision compels the view, and precludes any doubt as to the propriety of our determination of the Constitutional Issue on the merits 'Grayson vs. Harris, 267 U. S. 352; Indiana *ex rel.* Anderson vs. Brand, 303 U. S. 95' ".

In the instant case, the Constitutional question has obtained from the drafting of the complaint as contained in the Record of the Court of Appeals at folios 33-34, to the Decision of the Court of Appeals 9 N. Y. 2nd 533.

Specifically the Record is concerned clearly with a Constitutional question, which Constitutional question has been in the case since its very beginning, to wit: Whether section 2 subn. 6a *and 6b* (Italics added) of the Tax Law of the State of New York, re-enacted as Section 102 subn. 12 (g) of the Real Property Tax Law of the State of New York, is in violation of or contrary to the provisions of the Constitution of the United States and particularly the Fourteenth Amendment.

The Record in the Court of Appeals of the State of New York (fols. 33-34, 101, 131-133, 171) show that property owned by one person is being taxed for an obligation owed by another. This amounts to a taking of property without due process. Clearly this presents a substantial Constitutional question concerned as it is with a nation-wide situation. Trailers and Mobile Homes are in widespread use throughout the nation, and the intervention of this Court is respectfully requested in order that the law may be definitely settled involving and concerned as it is with the rights of many thousands of persons.

The Court of Appeals in its Decision 9 N. Y. 2nd 533, at page 539 states:

> "so in the instant situation, the Trailer Park owner has the means at his disposal by way of rent, to allocate the increased tax upon the owner of the trailer, the individual who rightfully should pay for it".

We believe that this conclusory statement of the Court of Appeals is neither justified nor legally correct. We are concerned with the rights of individuals who are being taxed, on property which these individuals do not own.

The fact that the property owner may be able to retrieve a portion of his assessment from the owner of the trailer, may well be a measure of expediency; however, expediency

is not and should not take the place of law in this nation of ours.

The Appellants therefore believe that the motion to dismiss should be denied and pray that this Court take jurisdiction in view of the fact that the determination of the Court of Appeals presents and is concerned with the application of the Fourteenth Amendment of the Federal Constitution, and clearly concerns the right of a State to enact Legislation of the kind and type here concerned.

The motion to dismiss should be denied.

Dated: February 22, 1962.

Respectfully submitted,

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